

Simplex Engineering and Foundry Vs. C.C.E.

Simplex Engineering and Foundry Vs. C.C.E.

SooperKanoon Citation : sooperkanoon.com/46088

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-29-2007

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Simplex Engineering and Foundry

Respondent : C.C.E.

Judgement :

The applicant filed this application for waiver of pre-deposit of amount of Service Tax of Rs. 63,17,721/- and penalties. In this case, the demand is confirmed by treating the applicant as provider of consulting engineer service.

2. The Revenue's case is that in the contract price break up, there was a separate price for design and engineering including supply of documents and opinion of the Revenue is that the applicants are liable to pay Service Tax on this amount.

3. The contention of the applicant is that a contract was entered with the Bhilai Steel Plant for design, engineering, manufacture, supply and delivery at site of indigenous plant and equipment for sinter plant.

The contention is that the design and engineering is in respect of goods manufactured by the applicant in their own factory and cleared on payment of duty to the Bhilai Steel Plant. The contention is that design and engineering of the goods manufactured by the applicant is part of manufacturing. The applicant relied upon the decision of the Tribunal in the case of Daelim Industrial Co. v. CCE

reported in 2006 (3) S.T.R. 124 where the Tribunal set aside the demand of Service Tax which was raised on the same ground. The contention is that appeal filed by the Revenue was dismissed by the Hon'ble Supreme Court. The applicant also relied upon the decision of the Tribunal in the case of CCE v. Larsen & Toubro Ltd. reported in 2006 (4) S.T.R. 63 where the demand raised on the similar issue was set aside and also relied upon other decisions of the Tribunal.

4. The Revenue relied upon the decision of the Tribunal in the case of CCE v. BSBK P. Ltd. reported in 2007 (5) S.T.R. 124 and in the case of Indian Farmers Fertilizer Co-Op. Ltd. v. CCE reported in 2007 (5) S.T.R. 281 when contrary view is taken.

5. As there are contrary opinions of the Tribunal on the same issue, therefore, prima facie, the applicant had a strong case in their favour. Therefore, the pre-deposit of amount of Service Tax and penalties are waived for hearing of the appeal. The stay petition is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com